

AMENDED IN ASSEMBLY MAY 12, 2010  
AMENDED IN ASSEMBLY FEBRUARY 17, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1604**

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**Introduced by Assembly Member Nava**  
**(Coauthors: Assembly Members Ammiano, Blumenfield, Chesbro,**  
**Hill, Huffman, Jones, Monning, Salas, Saldana, and Torlakson)**

January 5, 2010

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An act to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1604, as amended, Nava. Taxation: Oil Industry Fair Share Act.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax ~~on and after January 1, 2011~~, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 10% of the gross value of each barrel of oil severed. The tax would be administered by the State Board of Equalization and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. *This bill would require the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation to make specified certifications and determinations regarding certain oil wells, and to notify the board of the certification or determination.* The bill

would require the board to deposit all revenues collected pursuant to these provisions, *less refunds and reimbursement to the board for expenses incurred in the administration and collection of the tax*, into the General Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

~~This bill would take effect immediately as a tax levy.~~

*This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 21 (commencing with Section 42001) is  
2 added to Division 2 of the Revenue and Taxation Code, to read:

3

4 PART 21. OIL INDUSTRY FAIR SHARE ACT

5

6 42001. This part shall be known and may be cited as the Oil  
7 Industry Fair Share Act.

8 42002. For purposes of this part, the following definitions shall  
9 apply:

10 (a) "Barrel of oil" means 42 United States gallons of 231 cubic  
11 inches per gallon computed at a temperature of 60 degrees  
12 Fahrenheit.

13 (b) "Board" means the State Board of Equalization.

14 (c) "Gross value" means the sale price at the mouth of the well  
15 ~~in the case of oil~~, including any bonus, premium, or other thing of  
16 value paid for the oil. If there is no sale at the time of severance,

1 “gross value” means the sale price when the oil is sold, including  
2 any bonus, premium, or other thing of value paid for the oil. If oil  
3 is exchanged for something other than cash, or if the relation  
4 between the buyer and the seller is such that the consideration  
5 paid, if any, is not indicative of the true value or market price, then  
6 the board shall determine the value of the oil subject to the tax  
7 based on the cash price paid to producers for like quality oil in the  
8 vicinity of the well.

9 (d) “Oil” means petroleum, or other crude oil, condensate, casing  
10 head gasoline, or other mineral oil that is mined, produced, or  
11 withdrawn from below the surface of the soil or water in this state.

12 (e) “Producer” means any person or entity that takes oil from  
13 the earth or water in this state in any manner; any person that owns,  
14 controls, manages, or leases any oil well in the earth or water of  
15 this state; any person that produces or extracts in any manner any  
16 oil by taking it from the earth or water in this state; any person  
17 that acquires the severed oil from a person or agency exempt from  
18 property taxation under the United States Constitution or other  
19 laws of the United States or under the California Constitution or  
20 other laws of the State of California; and any person that owns an  
21 interest, including a royalty interest, in oil or its value, whether  
22 the oil is produced by the person owning the interest or by another  
23 on the person’s behalf by lease, contract, or other arrangement.

24 (f) “Production” means the total gross amount of oil produced,  
25 including the gross amount attributable to a royalty or other  
26 interest.

27 (g) “Severed” or “severing” means the extraction or withdrawing  
28 from below the surface of the earth or water of any oil, regardless  
29 of whether the extraction or withdrawal shall be by natural flow,  
30 mechanical flow, forced flow, pumping, or any other means  
31 employed to get the oil from below the surface of the earth or  
32 water, and shall include the extraction or withdrawal by any means  
33 whatsoever of oil upon which the tax has not been paid, from any  
34 surface reservoir, natural or artificial, or from a water surface.

35 (h) “Stripper well” means a well that has been certified by the  
36 ~~board~~ *Division of Oil, Gas, and Geothermal Resources in the*  
37 *Department of Conservation* as an oil well incapable of producing  
38 an average of more than 10 barrels of oil per day during the entire  
39 taxable month. Once a well has been certified as a stripper well,  
40 that stripper well shall remain certified as a stripper well until the

1 well produces an average of more than 10 barrels of oil per day  
2 during an entire taxable month.

3 ~~42003. On and after January 1, 2011, for the privilege of~~  
4 ~~severing oil from the earth or water in this state for sale, transport,~~  
5 ~~consumption, storage, profit, or use, a tax is hereby imposed upon~~  
6 ~~all producers at the rate of 10 percent of the gross value of each~~  
7 ~~barrel of oil severed. The tax shall be applied equally to all portions~~  
8 ~~of the gross value of each barrel of oil severed.~~

9 *42003. There is hereby imposed an oil severance tax upon any*  
10 *producer for the privilege of severing oil from the earth or water*  
11 *in this state for sale, transport, consumption, storage, profit, or*  
12 *use, at the rate of 10 percent of the gross value of the product.*

13 42004. Except as otherwise provided in this part, the tax shall  
14 be upon the entire production in this state, regardless of the place  
15 of sale or to whom sold or by whom used, or the fact that the  
16 delivery may be made to points outside the state.

17 42005. The tax imposed by this part shall be in addition to any  
18 ad valorem taxes imposed by the state, or any of its political  
19 subdivisions, or any local business license taxes that may be  
20 incurred ~~as a~~ *for the* privilege of severing oil from the earth or  
21 water or doing business in that locality. There shall be no  
22 exemption from the payment of an ad valorem tax related to  
23 equipment, material, or property by reason of the payment of the  
24 gross severance tax pursuant to this part.

25 42006. (a) The tax imposed by this part shall not be passed  
26 through to consumers by way of higher prices for oil, natural gas,  
27 gasoline, diesel, or other oil or gas consumable byproducts, such  
28 as propane and heating oil. The board may monitor and investigate  
29 any instance where producers or purchasers of the oil or gas have  
30 attempted to gouge consumers by using the tax as a pretext to  
31 materially raise the price of oil, natural gas, gasoline, diesel, or  
32 other oil or gas consumable byproducts, such as propane and  
33 heating oil.

34 (b) This section applies when not superceded by federal law.

35 42007. Two or more producers that are corporations and are  
36 owned or controlled directly or indirectly, as defined in Section  
37 25105, by the same interests shall be considered as a single  
38 producer for purposes of application of the tax prescribed in this  
39 part.

42008. (a) There shall be exempted from the imposition of the tax imposed pursuant to this part oil produced by a stripper well in which the average value of oil as of January 1 of the prior year is less than thirty dollars (\$30) per barrel *price of California oil. The Division of Oil, Gas, and Geothermal Resources in the Department of Conservation shall notify the board of all wells that have been certified as a stripper well.*

(b) For oil produced in this state from a well that qualifies under Section 3251 of the Public Resources Code or which has been inactive for a period of at least the preceding five consecutive years, the imposition of the tax imposed pursuant to this part shall be reduced to zero for a period of 10 years. *The Division of Oil, Gas, and Geothermal Resources in the Department of Conservation shall determine which wells qualify under Section 3251 of the Public Resources Code or which have been inactive for a period of at least the preceding five consecutive years, and shall notify the board of its determinations.*

(c) There shall be exempted from the imposition of the tax imposed pursuant to this part all oil owned or produced by the state and any political subdivision's (including any local public entity (as defined by Section 900.4 of the Government Code)) proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

42009. The tax imposed by this part is due and payable to the board quarterly on or before the last day of the month next succeeding each calendar quarter.

~~42010. (a) Any person that fails to pay any tax within the time required shall pay, in addition to the amount of tax owed, interest at the rate of  $1\frac{1}{2}$  percent per month, or fraction thereof, from the date on which the tax became due and payable to and including the date of payment.~~

~~(b) Every payment on a delinquent tax owed pursuant to this part shall be applied as follows:~~

~~(1) First, to any interest due on the tax.~~

~~(2) Second, to any penalty imposed by this part.~~

~~(3) Third, the balance, if any, to the tax due.~~

*42010. Every payment on a delinquent tax owed pursuant to this part shall be applied as follows:*

*(a) First, the tax due.*

*(b) Second, to any penalty imposed by this part.*

1 (c) *Third, the balance, if any, to any interest due on the tax.*

2 42011. Each producer shall prepare and file with the board a  
3 return in the form prescribed by the board containing information  
4 as the board deems necessary or appropriate for the proper  
5 administration of this part. The return shall be filed on or before  
6 the last day of the calendar month following the calendar quarter  
7 to which it relates, together with a remittance payable to the board  
8 for the amount of tax due for that period.

9 42012. The board may prescribe those forms and reporting  
10 requirements as necessary to implement the tax, including, but not  
11 limited to, information regarding the location of the well by county,  
12 the gross amount of oil produced, the quantity sold and the selling  
13 price, the prevailing market price of oil, and the amount of tax  
14 due.

15 42013. The board shall administer and collect the tax imposed  
16 by this part pursuant to the Fee Collection Procedures Law (Part  
17 30 (commencing with Section 55001) of Division 2). For purposes  
18 of this part, the references in the Fee Collection Procedures Law  
19 to “fee” shall include the tax imposed by this part, *and* to  
20 “feepayer” shall include a ~~person~~ *producer* required to pay the tax  
21 imposed by this part.

22 42014. The board may prescribe, adopt, and enforce emergency  
23 regulations relating to the administration and enforcement of this  
24 part. Any emergency regulations prescribed, adopted, or enforced  
25 pursuant to this section shall be adopted in accordance with Chapter  
26 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
27 Title 2 of the Government Code, and for purposes of that chapter,  
28 including Section 11349.6 of the Government Code, the adoption  
29 of these regulations is an emergency and shall be considered by  
30 the Office of Administrative Law as necessary for the immediate  
31 preservation of the public peace, health and safety, and general  
32 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
33 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
34 including subdivision (e) of Section 11346.1 of the Government  
35 Code, any emergency regulations adopted pursuant to this section  
36 shall be filed with, but not be repealed by, the Office of  
37 Administrative Law, and shall remain in effect until revised by  
38 the director.

39 42015. The board shall deposit all taxes, penalties, and interest  
40 collected pursuant to this part, *less refunds and reimbursement to*

1 *the board for expenses incurred in the administration and*  
2 *collection of the tax, in the General Fund.*

3 42016. The provisions of this part are severable. If any  
4 provision of this part or its application is held invalid, that  
5 invalidity shall not affect other provisions or applications that can  
6 be given effect without the invalid provision or application.

7 SEC. 2. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

16 ~~SEC. 3. This act provides for a tax levy within the meaning of~~  
17 ~~Article IV of the Constitution and shall go into immediate effect.~~

18 SEC. 3. *This act provides for a tax levy within the meaning of*  
19 *Article IV of the Constitution and shall go into immediate effect.*  
20 *However, the provisions of this act shall become operative on the*  
21 *first day of the first calendar quarter commencing more than 90*  
22 *days after the effective date of this act.*